IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 524 of 2006

Date of decision: 02.11.2006

Food Corporation of India

..... Petitioner.

Versus

M/s Shree Ram Rice Mills & Others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. H.S. Dhandi, Advocate
for the petitioner.

Mr. Pawan Kumar, Advocate
for respondent No. 1.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed against the order dated 17.11.2005 passed by the learned Additional Civil Judge (Senior Division), Sangrur whereby an application for amendment of plaint filed by the plaintiff was allowed.

Learned counsel for the petitioner contends that the plaintiff had filed an application for amendment of the plaint in October 2004 and the said application was allowed on 09.05.2005. Against that order the petitioner had preferred a Civil Revision Petition in this Court bearing No. 3419 of 2005 which was also allowed and the order of the trial Court granting amendment was set aside and the matter was remanded back to the

trial Court to pass a fresh order after recording reasons. Now the trial Court has passed the impugned order again allowing the application for amendment. A reading of the order of the trial Court would show that initially the plaintiff had filed a suit for declaration to the effect that the allotments made by the petitioners and their officers of rice for the purpose of custom milling was not as per their own circulars and hence discriminatory. During the pendency of the suit the plaintiff moved an application for amendment of the plaint to contend that as a result of this discriminatory allotment which was against their own circulars the plaintiffs had suffered a loss and they were entitled to damages for the said loss. They thus wished to amend the suit to incorporate the prayer for grant of damages. They have duly paid the Court fee on the amount of damages sought by them.

The trial Court has allowed the amendment after recording the observations as hereunder:-

> "After hearing, I am of the considered view that amendment which the plaintiff wants to seek by way of present application is in the form of having its base upon the Govt. instructions which are applicable both to the plaintiff and defendant. The fact as to how far the plaintiff was not entitled to milling is the matter of evidence, which relates to the question of legal entitlement. At this stage, Court is not to see as to what right plaintiff had acts. The Court is only to see as to whether the proposed amendment is necessary for disposal of case. Certainly in this case by way of amendment, the plaintiff will be seeking the relief beyond scope of legal notice u/s 80 CPC

which has been issued to state of Punjab, yet the fact remains that by way of amendment, it is continuity of suit and for which reply has been sought from the defendants amounts to clear notice to defendants about the proposed amendment and for allowing amendment, sending of independent notice u/s 80 CPC can be dispensed with. As amendment is just necessary for disposal of case and even if amendment is not allowed and plaintiff will given right to file independent suit qua the relief claimed in the amendment, it will amount to multiplicity of litigation. The law of land provides the minimum litigation and if such amendment is not allowed, it will lead to filing of separate suit by the plaintiff against the defendant it will not only be addition to the counting of suits, but will be also burden on the defendants in engaging fresh counsel to contest other case. Thus, it is in interest of justice as well as in the interest of financial implication, amendment is allowed. Accordingly, I allow the application for amendment of plaint."

The learned counsel for the petitioner has raised two contentions to challenge the order. Firstly he states that the amendment has been sought without any notice under section 80 of the Code of Civil Procedure having been issued to the petitioner. I am not impressed with this contention. The trial Court has rightly noted that the relief flows from the averments made in the original suit and if not allowed would result in multiplicity of litigation. It was also noticed that sending notice under Section 80 of the Code of Civil Procedure can be dispensed with. I find no error in the view taken by the trial Court.

Learned counsel then contended that the amendment is against the provision of Order 6 Rule 17 of the Code of Civil Procedure as no amendment can be allowed after the trial has commenced. Learned counsel inform me that issues have been framed in the case but evidence of the plaintiff has yet to be commenced. In this view of the matter I am of the opinion that since the cause of action had arisen as a result of discriminatory allotment of rice during the pendency of the suit and does not change the basic structure of the suit and it was permissible for the plaintiff to file an independent suit application or amendment has been rightly allowed in the present suit. For this view I am fortified by the judgment of the Hon'ble Supreme Court in **Rajesh Kumar Aggarwal v. K.K. Modi 2006(2)RCR 577.** The relevant observations of the Hon'ble Supreme Court are as hereunder:-

> "...15. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.
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> 16.As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the

contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

17. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case."

For the aforementioned reasons, I find no merit in this revision petition and the same is accordingly dismissed.

November 02,2006 (P.S. PATWALIA)
dinesh JUDGE